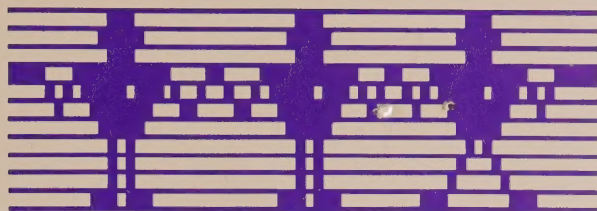


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REPORT OF THE INDIAN COMMISSION OF ONTARIO

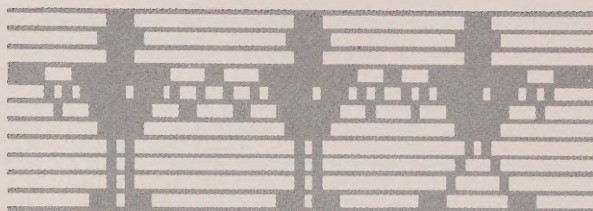
RAPPORT DE LA COMMISSION SUR LES INDIENS DE L'ONTARIO

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REPORT OF THE INDIAN COMMISSION OF ONTARIO

October 1, 1985 — March 31, 1987

Indian Commission of Ontario
236 Avenue Road
Toronto, Ontario
M5R 2J4

Roberta Jamieson, Commissioner



INDIAN COMMISSION OF ONTARIO

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**LETTER OF TRANSMITTAL
OF THE REPORT
OF THE COMMISSION**

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**To: The First Nations of Ontario
The Government of Canada
The Government of Ontario**

The Indian Commission of Ontario was created to assist Canada, Ontario, and the First Nations identify, clarify, negotiate and resolve difficult and long-standing issues in a mutually-acceptable manner. The Commission is unique, as are the processes it facilitates.

One of my responsibilities as Commissioner is to inform the Ontario public and the people of the First Nations about the Commission and the Tripartite Process in which the Commission facilitates the resolution of issues and claims.

I am pleased, therefore, to submit this section of the Commission's Report for the period from October 1, 1985, to March 31, 1987, for general circulation. It contains:

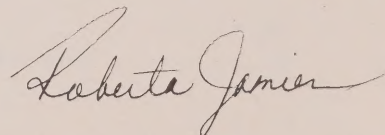
- background information: the Commission has never published a document explaining why it was created and what special need it fulfills. The report begins on this note to create a common perspective through which all interested persons can understand its activities;
- a description of the Tripartite Process: one of the Commission's principal functions is facilitating a unique process in which the parties jointly seek to resolve issues and claims;
- the experience of the first half of the Commission's renewed mandate, and
- a list of the issues and claims currently being negotiated through the the Tripartite Process.

Since my appointment as Commissioner on October 1, 1985, I have built on the foundation created by my predecessor, Justice Patrick Hartt. From that beginning, new efforts have been made and new approaches have been taken to meet with new realities and new issues.

Aside from facilitating the Tripartite Process, the Commission has had three other priorities for the period covered by the Report: assisting the parties to set out precise negotiation agendas; developing clear procedural rules for the Tripartite Council and by which a particular set of negotiations commences and moves ahead; and assisting the parties to clarify their respective positions on each of the issues and claims.

These preliminary steps to lay the groundwork for productive negotiations have now been completed. My discussions with each of the parties confirm that they are anticipating substantial progress in the months ahead.

Canada, Ontario, and the First Nations now stand on the threshold of a new era. Each party's ability to reach mutually-acceptable resolution of long-standing issues will be tested. Each party faces the challenge which comes with the opportunity to make that which is mutually desirable a concrete reality, to give substance to promise, to put words into practice.



**Roberta Jamieson
Commissioner**

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PART ONE:

BACKGROUND INFORMATION

Introduction

The Indian Commission of Ontario was established in 1978 to assist Canada, Ontario, and First Nations* in Ontario to identify, clarify, negotiate and resolve issues which they agreed were of mutual concern.

These parties joined together to create the Commission. With the agreement of representatives of the First Nations, the federal and provincial governments passed complementary Orders in Council** to put the legal foundation under it, and appointed a Commissioner.

The Indian Commission of Ontario is a unique instrument in Canada. There are no parallels with which it can be compared. Most of the issues involving First Nations are unique in Canadian society, politics, and law. Most have been unresolved for many decades. No mechanism for resolving these complex and difficult issues had proven satisfactory. The Indian Commission of Ontario was created because it was needed to assist the parties develop new mutually-acceptable relationships and arrangements.

To understand how the need arose for this special kind of agency and process, one must examine a progression of events in Canadian history.

The Historical Perspective

At the beginning of the relationship between First Nations and the peoples who came to settle Canada, aboriginal rights were the subject of serious Royal Proclamations and of solemn Treaty-making ceremonies. Then a period passed in which aboriginal rights were considered as a quaint expression of Indian rhetoric; treaty rights were thought of as meaningless relics of the past. During this period, the Indian people of Canada were considered variously as a disappearing race, subjects for acculturation, exotic pieces of the cultural mosaic, or wards needing care and protection.

Laws were passed. Government agents exerted nearly total control over the affairs of Indian communities. Assimilation of Indians into "Canada's mainstream" was thought to be best. Children were gathered up and sent to distant boarding schools.

For whatever reason, the result of these and other arrangements was serious and dramatic deficiencies for most Indian people regarding income levels, living conditions, health care, and educational levels in comparison with non-Indian Canadians. Mechanisms instituted by governments to manage Indian people, lands, and resources, or to improve conditions in most instances proved to be ineffective and costly and often made conditions worse.

Attitudes towards Indian people had created self-fulfilling prophecies.

A vicious cycle became established and institutionalized.

Throughout this period, Indian people were denied control over their resources and their affairs, including their schools, communities, and sometimes even their freedom to travel. In this situation, it was nearly impossible for them to remedy the situation in which they found themselves.

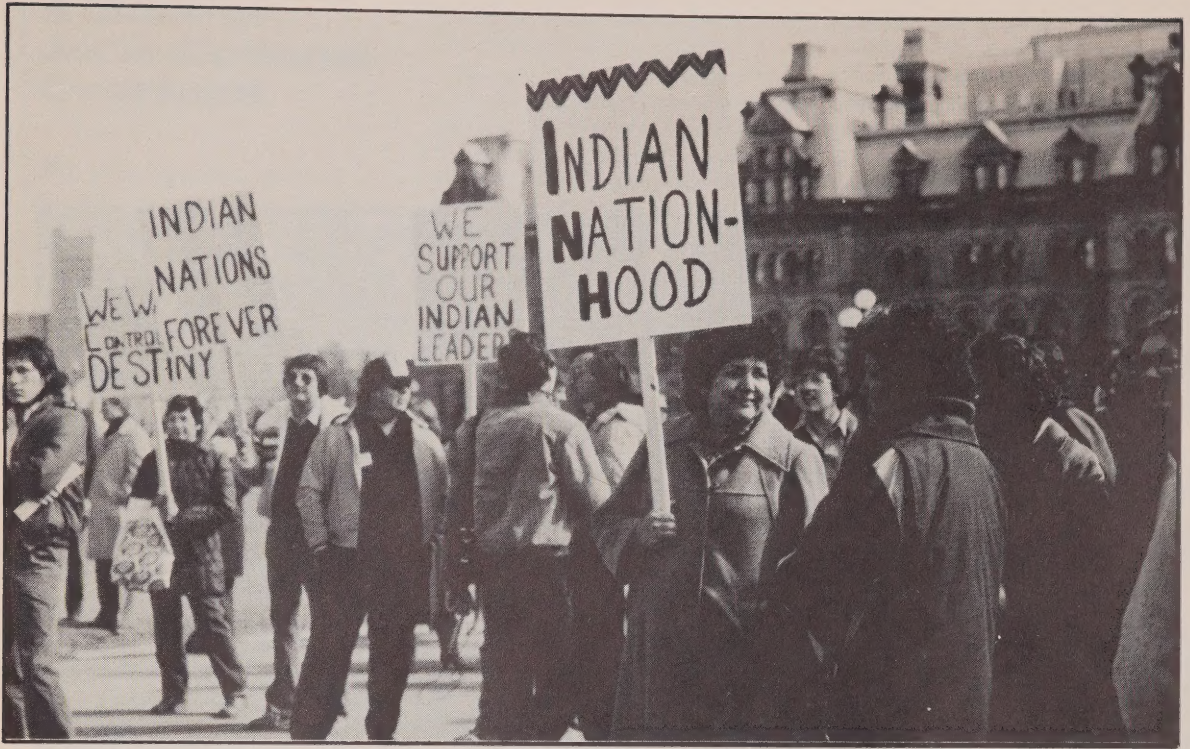
Gradually, however, new attitudes began to take hold and the legacy of injustice, poverty, social problems and negative attitudes which the people of the First Nations had inherited from the past became unacceptable to most Canadians. In general, Canadians have come to accept that the future of Indian peoples and their communities as distinct, diverse, and rich cultures must be assured within Canada's social and political fabric.

A variety of factors combined to change these circumstances. Legal opinions favouring Indian rights, constitutional recognition of aboriginal and treaty rights, enlightened attitudes, new geo-political realities and a desire on all sides to do away with unacceptable chronic conditions have combined to create an atmosphere in which the need for change has become an imperative.

*There are 126 Indian communities or groups of nearby communities in Ontario which are "bands" within the meaning of the federal Indian Act. Most of these communities or groups refer to themselves as "First Nations". According to the Department of Indian Affairs and Northern Development, the total of their population in Ontario is over 51,000. Another 30,000 persons who are "Indians" within the meaning of the Indian Act do not live on reserve lands.

**Canada — Privy Council PC. 1986-4767, 26 March, 1986 (T.B. Rec. 801338); Order in Council PC. 1985-3117.

Ontario — Executive Council Order in Council 238485.



Changing A Relationship Is Not An Easy Task

But finding a situation to be unacceptable and making a situation acceptable are two different matters. For Indian people in Ontario, the accumulated baggage of a century of suspicion and hostility does not blow away merely because people have a desire to establish positive, constructive relations. Merely wishing for change and welcoming Indian people to take part in the change process does not mean change will necessarily occur in a mutually beneficial manner. Nor does it mean real change will occur without some discomfort to all parties concerned.

The federal-provincial-First Nation dynamic offers special challenges to those who seek to bring about change. An inventory of the obstacles which must be overcome is formidable.

Over the years, cross-cultural misunderstandings, intolerance and prejudices have made it difficult for the people who came to settle Canada and the people of Canada's First Nations to discuss approaches which might lead to mutual support and cooperation.

For a time, as conditions became acutely distressing, Indians were seen as chronic complainers. As Indian people asserted what they considered to be their rights, governments responded with new laws and strict enforcement.

Then, as relations with governments worsened, protest seemed the only way for Indian people to have their voice heard. More recently, tensions, stresses, and visible results of social disorganization and dependency have soured and hardened relationships of First Nations with the provincial and federal governments.

The result is an accumulation and backlog of unresolved problems which is staggering.

The federal-provincial-First Nation dynamic offers special challenges to those who seek to bring about change.



**Problems left to look
after themselves will
not disappear;
rather they will tend
to fester and worsen.**

A Maze of Jurisdictional Overlaps

All of this would be problem enough, but in addition, Canada has a complexity of legal jurisdictions and overlapping levels of authority. Ordinary federal-provincial problems are difficult enough to resolve — but when these involve matters relating to First Nations, they become even more complex.

For example, “Indians and lands reserved for the Indians” is listed in the Canadian Constitution as a federal responsibility. Yet “education” is listed as a provincial responsibility — and recently, the Constitution has been amended to enshrine aboriginal and treaty rights, which First Nations believe include having jurisdiction over the education of their own children. Who, then, has jurisdiction regarding a school for Indian children? What type of education is to be provided? And how does a First Nation which wishes to assume control of the education of its own children find the means to do so? How does all this change if the children are to attend a school which is not located on an Indian reserve?

Another example is the subject of Indian fishing. Canada has entered into certain Treaties with First Nations which confirm the right to fish as an integral part of their way of life. Aboriginal and treaty rights are now enshrined in the Canadian Constitution. On the other hand, although in the Canadian Constitution “fisheries” is listed as a federal

legislative responsibility, the Federal Government has delegated the enforcement of certain regulatory aspects of “fishing” to the provincial government. Generally, the provinces are not at one with either Canada or the First Nations regarding aboriginal and treaty rights, and Indians continue to be charged for taking fish in a manner or at a time which they feel is guaranteed to them, but which is contrary to provincial interpretation of fishing laws. How, then, do the various governments and First Nations cooperate to ensure the conservation of the fisheries resource and at the same time reflect the special rights of Indian people with respect to fishing?

Few Mechanisms Have Been Available to Resolve Conflict

A century of policies and attitudes has to be peeled away before fundamental truths become evident. There are cross-cultural differences which make clear communication difficult. The atmosphere of mistrust and lack of confidence lingering from other times causes new misunderstandings; effects of one dispute tarnish efforts to settle another and the conditions which gave rise to the dispute soon create new conditions adding on yet another layer of problems.

There have been no mechanisms available to resolve conflict and to create a new positive relationship. Certainly the parties have had access to the courts — and no doubt some issues will ultimately be taken there for determination. But courts are inhibited by tradition, mandate and structure from recognizing and accommodating the unusual historical and political circumstances of First Nations. At best, the legal process is costly, time-consuming, slow to work, requires an adversarial confrontation, and results in

decisions which may be limited and unsatisfactory to all concerned. When legal action is taken, the parties are stripped of all decision-making authority and control and are forced to await an imposed solution from an institution ill-equipped to handle what are basically political problems.

Other alternatives such as protest, public accusation and counter-accusation, and media wars have not in the past produced significant results. In fact, often new problems and hardened attitudes have been created.

Neither has the alternative of direct discussions between officials of Canada and/or Ontario and the First Nations regarding grievances and proposals for change been effective. Such direct government/First Nation negotiations generally have not been happy occasions and are often reduced to disputes over what agreements have been reached or over undertakings which go unfulfilled.

Other mechanisms to facilitate agreement of the parties have not yet been developed. Alternative means of conflict resolution are notable by their absence.

Nonetheless, despite the legacy of difficulties and complexities, the task of building a future which will allow all people to live in harmony had to be tackled at some point. Problems left to look after themselves will not disappear; rather they will tend to fester and worsen. Neither the situation nor the disputes can be expected to evaporate, and the socio-economic circumstances of most Indian communities do not permit matters to be ignored. As revealed by almost every statistical index — lack of housing, infant mortality, low life expectancy, youth suicide, unemployment, educational underachievement — the situation of the majority of the people of the First Nations is not comparable with that enjoyed by the average Canadian.



**A new means of
conflict resolution
had to be invented, a
means of reconciling
competing interests
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The New Climate for Constructive Change

Fortunately, thanks to the work of dedicated Indian people and their organizations, thanks to enlightened officials and elected federal and provincial representatives, a new climate is being built. In it, greater potential exists to create a positive and productive relationship leading to significant changes which will be of benefit to all parties.

All sides now acknowledge that unless Indian people are welcomed as participants, designers, and planners in creating change, the good intentions and well-crafted designs of bureaucrats or politicians will not be enough.

Persons on all sides have recognized that resolving tough issues was not possible with the available mechanisms. Often, the usual means which have been resorted to tend to make matters even worse because of their adversarial and/or confrontational nature or because they generally fail to reflect First Nation perspectives.

A new means of conflict resolution had to be invented, a means of reconciling competing interests rather than creating a new arrangement of winners and losers. There was a need for an agency which would establish a neutral ground for negotiations, and which would establish the climate and procedure in which mutually-acceptable accommodations could be crafted.

Only in Ontario has the right chemistry existed for such an instrument to be created.

That instrument is the Indian Commission of Ontario.

The Commission Is Established

With the agreement of representatives of the First Nations, provincial and federal Orders in Council established the Indian Commission of Ontario and set out its duties, powers and responsibilities. On the surface, the Commission's work looks simple:

- the Commission prepares the agenda for meetings of the parties;
- the Commission keeps independent formal records of the meetings;
- the Commission provides a neutral chair for meetings, and helps them to run smoothly.

If one stopped reading this Statement at this point, one might assume that the Commission was just a means to enable people with good intentions and admirable attitudes to hold meetings. This interpretation would fall far short of the kind of Commission envisaged by the parties. There was a real job to do.

Powers of the Commission

The Commission's mandate is to facilitate the resolution of issues and claims through the Tripartite Process. To assist it in carrying out this mandate, the parties agreed to give it certain powers, although in many instances their consent is required for the power to be exercised:

Convening of Meetings:

The Commission has the power and authority to convene meetings upon reasonable notice and to adjourn them, including the power to convene a meeting at its sole discretion for the purpose of considering an urgent matter.

Appointment of Chairpersons:

The Commission may appoint chairpersons for meetings other than those of the Tripartite Council. Council meetings are chaired by the Commissioner.

Production of Documents:

The Commission may require the representatives of any party to deliver to the Commission

any relevant documents or information available to that party which is not privileged as defined in the Access to Information Act, or to make available any person in a party's employ for the purpose of assisting the Commission in the resolution of an issue.

Suspension of a Process:

The Commission may, after consultation with the parties, suspend any of the Tripartite processes.

Setting of Deadlines:

The parties have provided the Commission with authority, after consultation with the parties, to impose deadlines for the completion of any process, to set questions and to request responses from the parties and, in consultation with the party concerned, set a reasonable time period for receipt of the response.

Determining and Resolving an Impasse:

On the application of a party to a matter before the Commission, the Commission may determine whether an impasse has occurred, and if so, require the parties to attend one mediation or other meeting to attempt to resolve the impasse or to consider alternative dispute resolution mechanisms.

Mediating or Arbitrating:

With the agreement of the Parties to a matter which has been referred to the Commission for examination and resolution, the Commission may act as, or arrange for, a mediator or arbitrator in and of any issue or any element of any issue.

Facilitating a Reference of an Issue:

The Commission may, with the consent of the Tripartite Council, refer any issue to a court, tribunal, body or person.

Recommending an Inquiry:

The Commission may recommend to the Tripartite Council the appointment of a Commission under the Inquiries Act or other legislation to inquire into such matters as the Commission considers necessary.



The Participation of All Parties is Vital to Success

All parties which created the Commission — Canada, Ontario and the First Nations — are vital to successful resolution of most issues and claims. These matters are characterized by disagreements involving overlapping federal, provincial and First Nation jurisdictions and differing perspectives on numerous historical and legal realities.

There are historical and political circumstances which demonstrate

why all parties are required to resolve most issues:

- in 1905, Ontario joined with Canada as signatory to a treaty with the First Nations, "The James Bay Treaty #9," a circumstance unique in Canada;
- in some areas which affect First Nations, the federal government has delegated its regulatory powers to the provincial government;
- in regard to some claims or new reserves, settlement would be impossible without provincial participation, since the province now administers and controls the Crown lands involved;
- Canada and Ontario have signed bilateral agreements regarding such matters as resources on Indian lands, the provision of social services to Indian people, and policing services for Indian reserves;

- although bilateral agreements were commonplace in the past, in recent years, Canada and Ontario have recognized that in order for new arrangements to be effective, First Nations must be parties to their development and implementation.

There are, however, certain issues or aspects of an issue which all parties agree should be dealt with bilaterally involving the First Nations and one of the governments. The Commission is also empowered to facilitate bilateral negotiations when the parties agree.

PART TWO

THE TRIPARTITE PROCESS WHICH THE COMMISSION FACILITATES

Introduction

The most important function of the Commission goes beyond the formally-defined responsibilities and the exercise of powers mentioned in the previous section. Observing strict neutrality, the Commission facilitates a process for resolution of issues and claims and for reaching consensus which is known as "the Tripartite Process."

Through this process, the parties — Canada, Ontario, and the First Nations — attempt through negotiation to resolve a wide variety of issues and claims which they have agreed to address. Issues usually deal with everyday concerns like fishing, policing, wild rice, land claims, and social services. Claims deal with allegations filed by First Nations that they have been damaged by the actions or inactions of Ontario or Canada.

The Commission has also facilitated negotiations of the parties which have resulted in comprehensive agreements such as the Declaration of Political Intent, which deals with fundamental concepts and matters such as Indian self-government.

Often the goal of the negotiations is to translate lofty principle into ordinary practice in a workable, realistic way which is mutually-acceptable to all parties concerned.

By their nature, many of the issues are not capable of complete resolution because they involve strongly-held principles and/or rights, or because the parties are not able to bring to the talks a mandate to compromise. Then, it may be possible to resolve only some aspects of an issue, leaving other aspects to await



a later opportunity for resolution.

For example, although at a given time the parties may not be able to agree on the exact nature of the rights of First Nations to hunt, fish, or trap, they may be able to work out — on an interim basis and without prejudice to rights — an agreement which accords First Nations greater access to the resource, a significant role in its management in their area, and increased economic opportunity related to the industry.

Another field in which the Commission operates is the resolution of land claims. (A description of the

Claims Resolution Process is set out later in this section.)

The parties are represented in the resolution of an issue by persons whom they appoint. Federal representatives are not just representing their section or department, but are representing Canada. Similarly, provincial officials, regardless of their regular assignment, are representing Ontario. First Nations representatives are mandated by a specific First Nation or group of First Nations to represent them in a set of negotiations.



Often the goal of the negotiations is to translate lofty principle into ordinary practice in a workable, realistic way which is mutually acceptable to all parties concerned.

The Principles Underlying the Tripartite Process

The following principles and understandings have come to underlie the Tripartite Process:

- discussions are to be held at the highest levels of decision-making;
- an important safeguard in this process of creating constructive change is that no one can impose anything on another party without its consent;
- once an agreement is reached, all parties are committed to it and take responsibility for its successful implementation;
- each of the parties participates in negotiations on an equal footing;

- for every issue, only those parties appropriate to that issue are involved. Depending on the issue or the claim, different groupings of the parties may be involved in the various sets of negotiations. Sometimes an individual First Nation may be in negotiations with the federal and provincial governments. In another, a group of First Nations may be negotiating bilaterally with Canada.

It is understood by the parties that if previous means of resolving an issue had been able to produce acceptable results, the matter would not be in the Tripartite Process. A corollary of this understanding is that should the efforts of the parties fail to resolve the issue within the Process and with the help of the Commission, the problems which the parties are publicly committed to resolve will continue.

How The Tripartite Process Differs from Ordinary Negotiations

Negotiations in the Tripartite Process are distinguished in a number of ways from negotiations in most other situations, including those used by labour and management:

- in the Tripartite Process, the parties meet on an equal footing to find solutions through give-and-take and compromise — but this does not necessarily mean the negotiations are adversarial in nature. In the Process, the parties do not represent opposing forces which are attempting to gain as much as possible from each other. Rather the parties come together with their differing perspectives and realities in a joint quest for a mutually-acceptable solution to a pressing issue.
- the negotiations generally do not operate under a fixed deadline which if unmet could result in some pre-determined action taking place, e.g., in labour discussions, a strike may occur

if an agreement is not reached when a contract expires. Neither is there a clear legislative nor a constitutional requirement which obliges the parties to negotiate. They are involved in negotiations on an issue or claim primarily because there is the political will to resolve the matter.

The Tripartite Council

The parties — Canada, Ontario, and First Nations of Ontario — formed a body known as the “Tripartite Council” on March 16, 1978. Each party is represented in the Council at the highest level through federal and provincial Cabinet Ministers and Chiefs or heads of groups of First Nations.

Meetings of the Council are chaired by the Commissioner. The Council has agreed that it will meet at least three times each year.

When the Commission was first created, all First Nations in Ontario participated in the Council through one representative organization. Then there were four organizations representing the First Nations. Now, to reflect diverse histories, circumstances, and aspirations of First Nations throughout the province, any Chief may represent him/herself at a meeting of the Tripartite Council.

The Council’s agenda contains a variety of matters for it to consider:

- first of all, the Council hears and acts upon reports and recommendations made by the Commission regarding current issues and claims, the Tripartite Process, and administrative matters;
- the Council may adopt new procedural matters placed before it by the Commissioner or any of the parties;

- the Council sets out the schedule and workplan for negotiations;
- the Council considers proposals for new issues and claims to be resolved through the Tripartite Process.
- as well, the Council may meet to deal with global issues involving all the parties on which officials have not been able to work out a consensus. Ideally, of course, this would be a rare occasion, employed as a last recourse. If representatives of the parties are successful in reaching mutually-acceptable resolution of matters in their negotiations, the Council would only need to give formal ratification to agreements which had been reached.

The initial agenda for each meeting is set by the Council at the previous meeting.

The Commission keeps independent formal records of the meetings and provides copies to the parties. The record reflects agreements which are reached, points of disagreement, and undertakings made by a party, all parties jointly, or by the Commission. In this way, all parties have a common understanding and reference point for what has transpired.

HOW AN ISSUE IS HANDLED IN THE TRIPARTITE PROCESS

During the first year of its mandate, the Commission has developed the procedure by which an issue is resolved within the Tripartite Process.

How An Issue Is Accepted

Any member of the Tripartite Council can propose an issue for resolution through the Tripartite Process. It is not acceptable for a party simply to say it wants "issue x" resolved, however. The issue must be defined with sufficient substance that the other parties can determine if they wish to accept it for negotiation within the Tripartite Process.

An issue is accepted for resolution if three conditions exist:

- if all parties involved in the issue agree that it is of mutual concern;
- if the parties involved agree that the issue can best be resolved through the process facilitated by the Commission;
- if the Commission agrees that it can assist the parties to reach an agreement.

Once the three conditions listed above have been met, the Commission will notify the Tripartite Council of its potential involvement in the issue. If within a reasonable period of time, e.g., a month, a member of the Council requests that the involvement of the Commission be discussed by the Council at its next meeting, the matter will be placed on the agenda. If there is no response to the Commission's notification, it will proceed to exercise its responsibilities and mandate.

How Negotiations Are Handled

The parties which are involved in the issue are then asked to appoint representatives to attend meetings chaired by the Commission. At their initial meetings, these officials will determine the procedure which is to be followed to resolve the issue, the terms of reference for the negotiations, the mandates negotiators will need, the timeframe which is projected, resources required by the parties to participate equitably and fully, or any other matter preliminary to the substantive negotiations. As well, the representatives clearly identify the precise areas surrounding the issue which are to be considered and negotiated.

When these preliminary matters have been dealt with, the parties move into the negotiations. Here, representatives mandated by the parties begin to search for mutually acceptable solutions to the issue. Chairpersons for these sessions are appointed by the Commission. As well, the Commission actively assists the parties to find agreement in its capacity as facilitator, conciliator and mediator.

The Commission also has the responsibility of maintaining the formal, independent record of each set of negotiations. This reduces the possibility of misunderstandings arising in the future over what had been decided. The record makes it clear what undertakings have been made by each party.

When the representatives have resolved an issue by working out a mutually-acceptable agreement which has been ratified appropriately by the parties, a formal agreement is signed by the Ministers and Chiefs who are involved. The parties would then take the appropriate steps to implement the agreement.

The Commission actively assists the parties to find agreement in its capacity as facilitator, conciliator and mediator.



In the Tripartite Process, governments and First Nations are expected to sit down together as political equals to resolve issues which have eluded resolution through other means.

When Resolving an Issue Proves To Be Difficult

When resolution of an issue proves to be difficult, the Commission acts as a conciliator, finding creative solutions to resolve an impasse. If an issue still cannot be resolved, the Commission may instruct one of its staff to mediate an issue, or it may provide a formal mediator who has not been previously involved with the parties on the issue. Such a mediator requires clear terms of reference, a precise expression of a defined issue, and a timeframe for the mediation process. A mediator has no power to make a decision on the issue, but acts in a neutral and independent way to reconcile differences and to facilitate the efforts of the parties to resolve issues they have identified. A mediator does not make decisions, act as a judge, or determine issues. A mediator may make a report to the parties on the issues, identify common ground or new issues which have arisen, point out areas of disagreement, and make recommendations for their resolution.

In some cases, the parties may wish to move to arbitration to break an impasse. The Commission develops mutually-acceptable terms of reference and ensures that the issue

or point of fact on which arbitration is required is clearly defined. The Commission would appoint the arbitrator, who, after hearing the facts and studying the issue gives a decision which, according to a prior decision of the parties, may be binding or non-binding upon them.

When it is necessary in the negotiation of an issue to allow time for one or more of the parties to take certain actions, the Commission has the power to adjourn negotiations to a time when it is expected the action might be completed. As well, the Commission has the power to suspend negotiations. It is common for a suspension to occur when the failure of a party to live up to its undertakings within a reasonable time brings substantive negotiations to a halt. As well, if the parties reach an impasse on the issue, or when the Commission considers it necessary to the progress of negotiations, the Commission can ask Ministers and Chiefs who are party to the negotiations (or representatives named by the Chiefs) to meet and resolve the impasse, or it can refer the matter to the Tripartite Council.

If long-term solutions prove elusive, innovative interim arrangements are sometimes agreed upon which will provide some incremental change and concrete results until such a time as the parties can reach consensus on a more far-reaching agreement.

Hopefully, representatives of the parties will reach consensus on the resolution of all matters pertaining to an issue. However, when an issue cannot be resolved by negotiators, it may be brought to the attention of the highest level of decision-makers by placing it on the agenda of the Tripartite Council. When the issue involves only one First Nation or one group of First Nations and a decision is required from the highest level, special meetings may be called in which a Chief or group of Chiefs will join with Ministers of Ontario and Canada to consider and negotiate the matter.

HOW INDIAN LAND CLAIMS ARE HANDLED IN THE TRIPARTITE PROCESS

Until recently, there has been no means through which First Nations could negotiate claims they have made against the Federal and/or Provincial Government. Sometimes a claim might call for damages suffered as the result of alleged actions by the federal or provincial governments or their officials. In other cases, a claim results from an alleged failure of the Federal Government to act to protect First Nation interests as it is required to do as the result of its special relationship with them. Some claims have remained unanswered and unsettled from events which pre-date the Federal Government, that is, prior to Canada's Confederation in 1867.

About a decade ago, the Federal Government set out a defined policy through which it would attempt to resolve some of the claims which had accumulated. The policy evolved, and in 1982 a new statement was published under the title, *Outstanding Business*. Although the Provincial Government has not published a policy or process for establishing the validity of claims or the compensation to be made, it established an office for dealing with Indian claims about ten years ago.

In some instances, a claim and/or the means of settlement involves only the Federal Government. In other instances, a claim may involve in one capacity or another both the Federal and Provincial Governments. Claims can be submitted by First Nations directly to the Federal and/or Provincial Governments, or through the Indian Commission of Ontario.

The Claims Resolution Process

By agreement of the parties involved, claims filed by First Nations in Ontario can be resolved in a defined process facilitated by the Commis-

sion, which acts as an independent and neutral facilitator or mediator. Within this process, a variety of mechanisms and procedures are available to the representatives in any particular claims negotiation.

Currently, eight claims are at some stage of resolution within the Commission's claims process.

Land claims negotiations are characterized by well-defined issues based on historical facts. Generally, officials appointed as negotiators have professional experience and operate from a clearly-defined mandate. Canada and Ontario have each established distinct agencies to deal with land claims. For the Federal Government, claims negotiations are handled by the Specific Claims Branch of the Department of Indian Affairs and Northern Development. For the Provincial Government, the Office of Indian Resource Policy in the Ministry of Natural Resources deals with land claims. Claims are generally submitted by a representative of an individual First Nation.

Because claims negotiations follow well-defined steps, progress is easy to chart. These steps are:

1. A First Nation with a claim against the Federal Government and/or the Provincial Government requests that the claim be resolved through the Tripartite Process facilitated by the Indian Commission of Ontario.
2. The other parties involved in the claim agree to the proposal.
3. At negotiations facilitated by the Commission, the parties develop consensus on the historical facts.
4. The Federal Government forwards the claim to the Department of Justice for its opinion as to whether the claim is valid. A staff position is prepared, and then a corporate position. If the Provincial Government is involved, it also prepares a staff and corporate position.
- a. If the Federal or Provincial Government rejects the claim, the First Nation involved may pursue the claim by other means, such as legal action outside the claims process. Within the claims process, the First Nation can request mediation or arbitration of the dispute or some aspect of the dispute.
- b. If the government(s) consider the claim to be valid, the parties then enter into negotiations on the compensation which will settle the claim.
5. The parties work towards agreement on the criteria by which the compensation will be calculated, and then do the calculations. Compensation may include such elements as land or monetary considerations.
6. When consensus has been reached, a mutually-acceptable Settlement Agreement is drafted and concluded. The Commission may be called upon to draft this Agreement.
7. The parties then proceed to ratify the Settlement Agreement, First Nations by a referendum, Canada and Ontario by Orders in Council or Statutes.

Relationships of the Parties in the Tripartite Process

The Tripartite Process is not a mechanical procedure to which a party submits. All who participate in it have a responsibility and obligation to develop an equitable and productive working relationship which will lead to the resolution of the issue at hand.

In current real-life circumstances, there is an inherent imbalance of power in Indian-government relations. First Nations encounter legal and fiscal disadvantages in dealing with the power of the state. But in the atmosphere required for the Tripartite Process to be successful, power is not as relevant as creativity and cooperation.

If the parties are to be successful in establishing the new relationship they believe is necessary, they must operate by the rules of the new relationship in the negotiations which are creating it.

In the Tripartite Process, governments and First Nations are expected to sit down together as political equals to resolve issues which have eluded resolution through other means. No party is in the chair or acting as host — the Commission takes on these duties. Within the negotiation process, no party can make unilateral decisions which are binding on the other parties.

Each of the parties are on an equal footing as cooperating contributors to the development of mutually-acceptable solutions. All parties approach an issue with equal authority and commitment to search together for mutually-acceptable solutions.

This means that the parties must meet each other in the Tripartite Process in a very different manner than that in which the governments and First Nations

are accustomed to meet. In the Tripartite Process, the First Nation participants are neither clients being consulted nor special interest groups registering grievances and requesting governmental redress — there are other vehicles to use for consultation or protest. This means that in the Process, the parties must move away from the negative relationship of the past and abandon the use of power and position as a means of forcing change. Instead, the Process demands that the parties understand it as a unique and constructive means of resolving issues. Each party moves beyond old guideposts and parameters of the past in order to engage in sincere discussions conducted in a spirit of mutual trust and respect.

Responsibilities of the Parties For Their Representatives

The Tripartite Process begins and ends at the highest levels of decision-making. Resolution of the issues may affect the future well-being of First Nations, Ontario, and Canada. It is important, therefore, that each party ensure that its representatives understand the seriousness of the process in which they are involved and the high degree of commitment and priority which they have publicly expressed.

Each party is responsible, ultimately, for the negotiators who act on its behalf. Each is responsible for the positions which the negotiators take, and while it can take credit for the results they obtain, it also must share in taking responsibility if the Process fails to achieve results.

Each party must give its representatives clear mandates to negotiate and clear instruction regarding the parameters within which they must operate. Since often situations change during the course of negotiation, parties are also expected to



provide their representatives with quick access to the highest levels of decision-making so they can obtain authoritative instructions without delay.

Each party is also responsible for knowing about the Tripartite Process and the progress of negotiations, and to monitor and guide them as they move ahead.

Each party is expected to ensure that its representatives understand the duties, powers, and responsibilities of the Commission, and equally as important, those which the Commission does not have. In this respect, the parties are also expected to know about various mechanisms available through the Commission, e.g., arbitration, which may help to resolve a difficult issue or break an impasse.



RESPONSIBILITIES OF THE COMMISSION IN THE TRIPARTITE PROCESS

The Commission was not handed a guide-book on how to facilitate the Tripartite Process. There is no similar model available for comparison.

As a result, the Commission and the parties are pioneering a new way of conflict resolution, one which could have a powerful effect on the nature of Canadian society by offering a productive alternative to current means of dealing with conflict and disagreement. The process continues to evolve as experience teaches new lessons, and as new techniques prove to be useful.

The Commission does not represent Indian people, nor does it represent the governments, nor does it advocate or defend any point of view nor present arguments in favour

of any party's position. The Commission is not an advocate for any particular solution to an issue. Nor does it consider which party is right and which is wrong or which proposal has the greatest merit.

Rather, the Commission asks:

- "How can the Commission play a useful role which will assist the parties in resolving this issue?"
- "What recommendations can the Commission make which will help the parties to find the common ground upon which they can arrive at agreement?"
- "How can the Commission exercise its mandate effectively so as to promote the progress and agreement to which all parties are committed?"

The Commission and the parties are pioneering a new way of conflict resolution, one which could have a powerful effect on the nature of Canadian society by offering a productive alternative to current means of dealing with conflict and disagreement.

Creating an Atmosphere Conducive to Resolution

Many of the issues have been contentious, long-standing, and involve basic and dearly-held principles. The Commission facilitates efforts of the parties to create a productive atmosphere in which:

- the parties open lines of communication with each other to begin a new dialogue;
- the parties feel encouraged to be creative in their solutions rather than to advance out-moded positions, policies, or rhetoric;
- the parties feel comfortable enough with each other to exchange views, reach agreements, extend compromise, work together and foster the development of a cooperative relationship which allows them to work as a team in developing consensus on issues;
- the parties can be direct without being offensive, can seek resolution rather than to level abuse, and can be honest and frank with each other. The climate should be conducive to maintaining an open mind and exhibiting trust, confidence, and mutual respect;
- the parties can come to understand the special perspectives and requirements of each other.

The Commission has two special responsibilities in this respect. It ensures that the point of view of all parties is heard and understood. Second, the Commission is often called upon to translate what one party is saying to another. Terms used by one party may have a totally different meaning or tone to another party, or conversely, the parties may

use different terms to mean the same thing. Sometimes a party assumes that the other parties are familiar with concepts or background vital to understanding its position when this is not the case.

Working With The Parties Together to Facilitate Resolution

As well, during the course of negotiating sessions, the Commission facilitates the efforts of the parties in a variety of ways:

- it facilitates agreement upon terms of reference and work-plans for negotiations;
- it facilitates the identification of areas of agreement and the precise nature of disagreements;
- it may make verbal or written recommendations to assist the parties to move towards agreement;
- it makes it clear what is required of each of the parties if negotiations are to proceed;
- the Commission sets meeting dates, and in consultation with the parties, sets reasonable deadlines for the parties to table positions. The Commission is then directed by the commitments which the parties have given to each other and the deadlines which have been set. The Commission also has a duty, when necessary, to remind the parties of the understandings and agreements they themselves have made.



Working With Each Party to Facilitate Resolution

As well as facilitating meetings among the parties, the Commission often meets with each party separately to assist in clarifying its position on the issues and in understanding the nature of its participation:

- the Commission helps each party determine if and how it can reach agreements which will accommodate the needs and aspirations of the other parties. Often this calls upon a party to reflect on whether it has the political commitment to work towards a mutually-acceptable solution to the issue. This exercise obliges the parties to separate those elements of
- an issue in which their positions are too inflexible to make resolution likely from those for which there is a potential for resolution. Then, it can determine whether it will be able to compromise its positions or whether its positions are derived from principles or perspectives which make compromise unlikely. When a difficult balance must be found, the Commission may help a party find a satisfactory position which will meet all its requirements;
- the Commission points out to a party situations where positions held out by various officials representing it in different situations are inconsistent with each other;
- the Commission encourages each party to ensure that its

negotiators have clear mandates, and that they have sufficient instructions to be able to participate fully.

In these ways, the Commission assists the parties to be successful in achieving their jointly-declared desire to build mutually-acceptable and workable arrangements for the future. When necessary, however, the Commission also reminds the parties of their shared conclusion that if the current healthy climate does not produce healthy results, that climate is likely to dissipate and deteriorate.

PART THREE:

AN INVENTORY OF ACHIEVEMENTS

Introduction

When the Tripartite Council met on September 30, 1985, the parties came together for the first time in nearly two years. The atmosphere was positive and optimistic — a new start was being made.

The meeting generated enthusiasm and each party renewed its commitment to use the Tripartite Process in resolving issues which had been on the agenda for several years, and in tackling new issues which had come to the fore. The decisions reached at that meeting confirmed that the parties were serious about making progress. The parties agreed that within six months, Orders in Council would be developed and passed which would extend the Commission's mandate to March, 1989.

The parties felt that in order to produce results, they must devote more attention to the Tripartite Process. The Tripartite Council agreed to meet at least three times a year.

The enthusiasm and momentum which appeared in the first part of the Commission's mandate has generated some results. In addition to on-going negotiations on specific issues and claims, the Commission assisted the parties to accomplish the following achievements:

- a Declaration of Political Intent was publicly signed by political representatives of all parties offering a renewed commitment to the Tripartite Process with an emphasis on self-government;
- a Nishnawbe-Aski Nation Memorandum of Understanding was signed which commits the parties involved to negotiate agreements which would apply to the people of the Nishnawbe-Aski Nation regarding eleven subject areas;
- the 1985-86 Indian Policing Agreement was signed; regional negotiations on policing have been set up, and the Ontario Indian Police Commission has been established as an independent body;
- the 1986 Indian Lands Agreement was confirmed;
- the Squirrel Island Claim involving the Ojibways of Garden River and the Government of Canada was settled;
- agreement was reached to appoint a factfinder who produced an independent finding on a central issue in the Mississauga Band of Ojibways' Northern Boundary Claim;
- regional negotiations were convened to develop fishing agreements;
- education was identified and agreed upon by some of the parties as a new issue for negotiation.

Establishing Procedure and Focus: A Priority Matter

The Commission has also concentrated on two priorities designed to increase the effectiveness of the Tripartite Process. The Commission has:

- developed procedure, that is, the operating rules by which each set of negotiations commences and moves ahead, and
- assisted the parties to set a clear negotiation agenda, sometimes by recasting the issue in such a way as to permit the parties to achieve progress.

The Commission is now better able to anticipate procedural issues so that the parties can reach agreement on them at the beginning of the process rather than find lack of procedure clouding on-going negotiations. The Commission also recognizes the need to be flexible so that it can respond constructively to dynamic and changing situations.

At the outset of any given set of negotiations the Commission now uses a procedural agenda which it has developed to help the parties establish the framework and the necessary ground rules. The elements include determining who are the parties involved, how negotiators

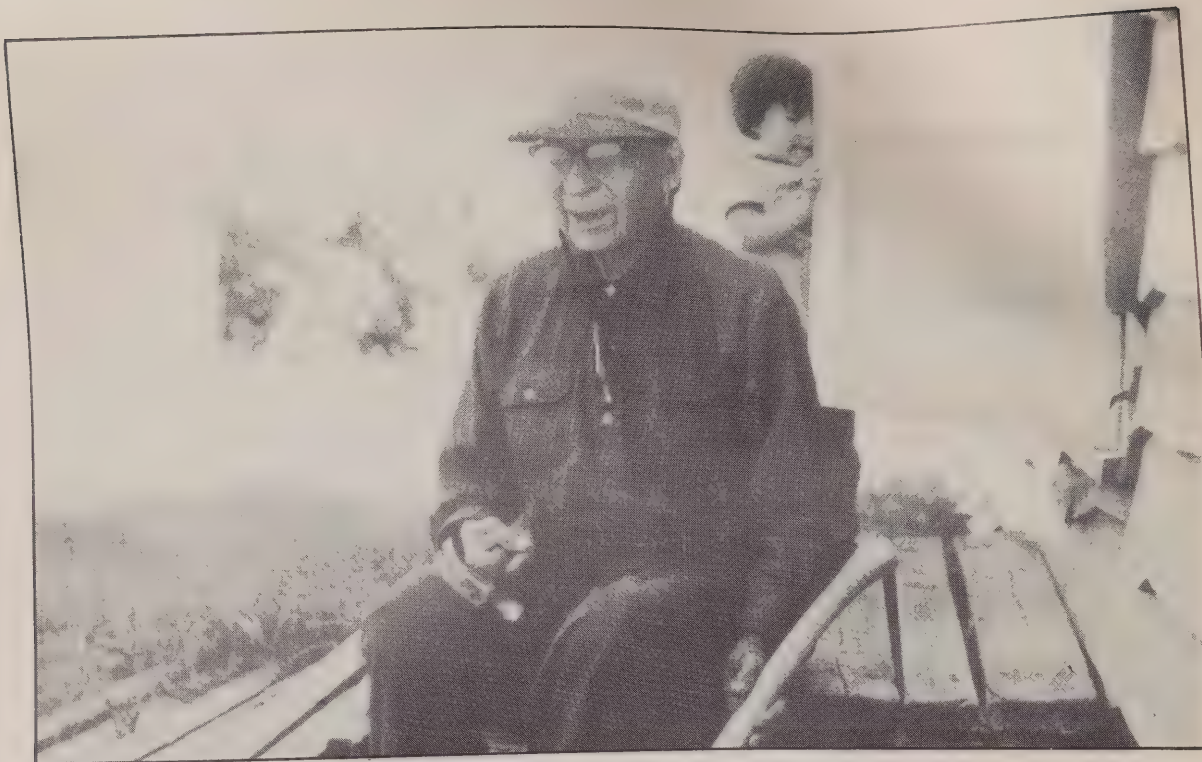


are to be appointed, what their terms of reference are to be, whether each party has sufficient planned resources to participate in the negotiations, what preliminary issues must be dealt with at the outset, what is the timeframe and what is the agenda. New areas of negotiations commence only when the parties have reached agreement on these key items. At times, this agreement is expressed in a Memorandum of Understanding.

Advance agreement is sought on means of dealing with certain situations which might arise in the course of negotiations. For example, the Commission has noted that often

there are misunderstandings about communications with the media. The potential for adverse impact of uncoordinated press relations is very high. Negotiations can be seriously affected when one party's public statements, made quite innocently, are considered by other parties to be inappropriate. Now, at the outset, the Commission encourages the parties to reach agreement on media relations.

A Declaration of Political Intent was publicly signed by political representatives of all parties offering a renewed commitment to the Tripartite Process with an emphasis on self-government.



Accommodating Diversity and Difference

In addition to these procedural improvements, the Commission also made a number of changes in the way negotiations have customarily been structured. This was necessary as a result of decisions of some First Nations that certain issues under negotiation were not appropriately dealt with on a province-wide basis, and instead should be negotiated by individual First Nations or a group of First Nations.

Such a change was to be expected. In the past, the consensus of all First Nations in Ontario was required before any decision could be made. This was difficult to accomplish, because such a requirement does not take into account the diversity of the First Nations in Ontario, or allow for a variety of positions to be taken.

Few generalizations can capture the diversity of these communities. Their locations range from isolated areas of the far north of the province

accessible only by bush planes to places near manufacturing centres in southern Ontario. Their economies may be based on traditional pursuits or new industries. There are obvious distinctions of language and culture: Ojibway, Cree, Mohawk and other Iroquoian languages are spoken. Some communities are tiny settlements, while others have populations in the thousands. Certain groups of First Nations have a common history involving the signing of Treaties; others have not signed Treaties.

In addition to this natural diversity — and sometimes because of it — there are also differences in perspectives. While First Nations may share many positions in common, each has its own vision of what their communities should be like in the future and its own timeframe and plans to make this vision a reality.

Canada and Ontario have agreed to recognize this diversity. First Nations are no longer expected to fit into a single mould in the Tripartite Process. Each can define and pursue resolution of an issue either as an individual First Nation as is the

case with Six Nations in the fishing negotiations, or with a group of First Nations as in the case of the Anishinabek Nation in its pursuit of a Justice Authority in the policing negotiations, or together with virtually all First Nations in Ontario as is the case with the social services negotiations.

As a result, the Commission was called upon to reorganize and recast certain of the negotiations into regional subsets involving those First Nations who wished to participate, each with its own subject matter, timeframe, and different perspectives. Policing and Fishing are two issues which exemplify how province-wide negotiations have been reorganized into regional negotiations.

These changes have also caused the Tripartite Council to restructure its agenda, since matters requiring meetings at the decision-making level are now dealt with separately by those parties which are directly involved. The Commission, in its report to the Tripartite Council, keeps all parties informed about the progress of each set of negotiations.

Developing A Shared Understanding of the Process

In addition to developing new procedures, much of the Commission's time has been devoted to educating and re-educating representatives of the parties who created the Commission about the nature of the Tripartite Process to which the parties have committed themselves. This is necessary because negotiations conducted under the auspices of the Indian Commission of Ontario put the parties in a different relationship with each other than that to which they have been accustomed historically. The differences are described in the sections of this Report on "Responsibilities and Relationships of the Parties in the Tripartite Process."

Over the last year, to help officials understand the Commission and the Tripartite Process, the Commission developed an orientation session which it offers to representatives of all parties. The session includes two video-taped presentations — one deals with the nature of the process and the mandate and responsibilities of the Commission; the other deals with the components of successful negotiations. These sessions have been offered in Toronto and in the future will be offered elsewhere in the province. Every First Nation and government department involved with the Commission has been invited to send officials to these sessions. Indeed, attendance at an orientation session is recommended for all officials who are to participate in negotiations.

The Commission has also attempted to raise public awareness about its work and the Tripartite Process through speeches, seminars, media interviews and printed materials.





Achievements Accomplished and Challenges to be Met

When the Commission and the Tripartite Process were created by the parties, the principal motivation was a conviction that change was necessary. The parties agreed that the status quo was not acceptable, and that a new means was required to forge a mutually-acceptable relationship involving First Nations, Canada,

and Ontario.

In the first part of the Commission's current mandate, there has been significant progress achieved. The signing of the Declaration of Political Intent, the 1986 Lands Agreement, the Nishnawbe-Aski Nation Memorandum of Understanding, and the Policing Agreement are some notable examples.

On the other hand, much remains to be done to ensure that these beginnings bear fruit. Many challenges remain unmet. Many new challenges lie ahead.

Since the Commission has the responsibility to assist the parties to resolve issues and claims, it has shared with the parties its analysis of the problem areas which currently impede the achievement of greater progress. As well, it has made recommendations for remedial action.



A Closing Commentary

One must remember that the Indian Commission of Ontario was established because in the view of all parties, none of the existing processes for changing an unacceptable status quo or for resolving disputes worked well. Should Canada, Ontario, and the First Nations fail to use the progressive and innovative initiative which the Commission provides them, there are few alternatives to which any of them can turn — it was the Commission which was to be the alternative. What is required, then, is for the parties to utilize the Commission and to put the Tripartite Process to work.

Today as then, there is no external source of energy to convert the expressed commitment of the parties into positive social change. The Tripartite Process does not have many externally-imposed deadlines

to compel negotiation. Efforts to resolve an issue or a claim are fueled solely by political commitment which must be constantly evidenced if the process is to offer promise, meaning and results.

While a statement of commitment creates momentum, in human relationships momentum is a sensitive, fragile, and rapidly-diminishing force. Momentum can be sustained only with attention, nurturing, and concrete proof of results.

Canada, Ontario, and the First Nations face the challenge which comes with the opportunity to make that which is mutually desirable concrete, to put words into practice.

It is the rare opportunity which stands patiently, inviting fulfillment.

Declaration of Political Intent

This Commitment made this Twentieth day of December, 1985.

Between: Her Majesty The Queen as represented by the Government of Canada represented herein by the Minister of Justice and the Minister of Indian Affairs and Northern Development (hereinafter referred to as "Canada")

– and –

Her Majesty The Queen as represented by the Government of Ontario represented herein by the Attorney General and Minister Responsible for Native Affairs (hereinafter referred to as "Ontario")

– and –

The Indian First Nations of Ontario who are represented by the Ontario Regional Chief and the Chiefs of Ontario Planning and Priorities Committee (hereinafter referred to as "The Indian First Nations of Ontario")

Whereas the Tripartite Council, consisting of representatives of Canada, Ontario and the Indian First Nations of Ontario, was established in 1978 for the purpose of identifying, clarifying, negotiating and resolving matters of mutual concern to the Parties; and has demonstrated the value of formal tripartite discussions between federal and provincial ministers and the chiefs and headmen of the Indian First Nations of Ontario;

And Whereas Canada, Ontario and the Indian First Nations of Ontario hereby reaffirm their commitment to resolve issues of mutual concern within the Tripartite Process;

And Whereas Canada, Ontario and the Indian First Nations of Ontario believe it is desirable to enter into tripartite discussions on Indian First Nations self-government in which matters and arrangements with respect to the exercise of jurisdiction and powers by First Nations' governments in Ontario are dealt with.

The Parties hereto make the following commitment:

1:00 The Parties hereby declare their commitment to enter into tripartite discussions to resolve issues relating to Indian First Nations self-government and matters and arrangements with respect to the exercise of jurisdiction and powers by First Nations' governments in Ontario.

1:01 The Parties agree that the matters with which the Tripartite Process on Indian First Nations self-government may deal, with the approval of the participants, shall include:

- (a) the forms, institutions, legal and constitutional status, source of jurisdiction, land issues and financial base of First Nations governments in Ontario, and

- (b) the clarification of areas of jurisdictional overlap and arrangements with respect to the exercise of jurisdiction by governments in Ontario.

1:02 The Parties agree that this Declaration shall not preclude and shall be without prejudice to:

- (a) any other Tripartite discussions or any bi-lateral discussions between Indian First Nations and Canada or Ontario on matters which may be dealt with under the Tripartite Process on Indian First Nations self-government;
- (b) the rights of Ontario and Canada to enter into negotiations and arrangements on self-government with other representatives of the aboriginal peoples of Ontario;
- (c) The constitutional discussions and processes contemplated by s. 37.1 of the Constitution Act, 1982, or
- (d) the positions which any of the Parties may adopt in any other forum

1:03 The Parties agree that this document is intended as an expression of goodwill and commitment to enter discussions. It is not intended to create, define or affect legal rights or to be construed as an interpretive aid in the determination of any legal right.

2:00 This commitment shall come into force on the date of its execution and shall continue in force unless terminated by one or more of the Parties on six months written notice to the other Parties hereto.

3:00 The Parties agree that nothing in this Declaration shall be so construed as to effect, prejudice or derogate from aboriginal, treaty, constitutional or any other rights, privileges or freedoms which have accrued to or may accrue to any Indian First Nations regardless of whether such rights, privileges and freedoms are recognized, established, or defined before or after the signing of this Declaration.

Signed at Toronto, Ontario, on the Twentieth day of December, 1985.

Those who signed the Declaration included:

Representing Canada:

Minister of Justice

Minister of Indian Affairs
And Northern Development

Representing Ontario:

Attorney General of Ontario
And Minister Responsible
For Native Affairs

Representing the Ontario Indian First Nations:

Gordon Peters
Ontario Regional Chief
Member of the Planning
And Priorities Committee

R.K. Miskokomon
Grand Chief
Anishinabek Nation
Member of the Planning
And Priorities Committee

Chief Norm Stinson
Anishinabek Nation
Member of the Planning
And Priorities Committee

Harry Duxtator
President
Association of Iroquois
And Allied Indians
Member of the Planning
And Priorities Committee

Robin Greene
Grand Chief
Grand Council Treaty #3 Nation
Member of the Planning
And Priorities Committee

Dennis Cromarty
Grand Chief
Nishnawbe-Aski Nation
Member of the Planning
And Priorities Committee

William Nothing
Deputy Grand Chief
Nishnawbe-Aski Nation
Member of the Planning
And Priorities Committee

Chief Gary Potts
Teme-Augama Anishnabai
Member of the Planning
And Priorities Committee

THIS MEMORANDUM OF UNDERSTANDING made this Twenty-fourth day of February, 1986.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA represented herein by the Minister of the Department of Indian Affairs and Northern Development hereinafter referred to as "Canada"

OF THE FIRST PART

AND

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO represented herein by the Attorney General and Minister Responsible for Native Affairs hereinafter referred to as "Ontario"

OF THE SECOND PART

AND

THE NISHNAWBE-ASKI NATION represented herein by the Grand Chief, hereinafter referred to as "NAN"

OF THE THIRD PART

WHEREAS

Canada, Ontario and NAN wish to negotiate agreements on matters of mutual concern regarding NAN;

AND WHEREAS

The parties are prepared to review the conditions and agreements between Canada, Ontario and NAN with a view to providing for the present and future self-government needs of NAN, and to make such further provisions and agreements as are consistent with the rights and aspirations of NAN;

AND WHEREAS

It is understood by the parties that Canada and Ontario will consider the public interest in the negotiation of any agreements pursuant to this Memorandum;

AND WHEREAS

NAN has the mandate from its constituents to negotiate these matters on their behalf;

AND WHEREAS

The parties are willing to enter into "local negotiations" for the purpose of recognizing NAN self-government within the context of Canadian Confederation;

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING witnesseth that the parties hereto mutually agree as follows:

1. (a) To commence tripartite negotiations forthwith on the following matters:
 - (i) fishing;
 - (ii) trapping and hunting; and
 - (iii) band status and lands for reserves.

Such matters to be negotiated with the objective of reaching agreement within a period of twelve (12) months from the beginning of negotiations, subject to the provisions of section 3.

- (b) To commence tripartite negotiations six (6) months from the date of signing of this Memorandum on the following matters:
 - (i) housing;
 - (ii) community infrastructures, including, but not limited to, hydro, sewage and water;
 - (iii) education;
 - (iv) health; and
 - (v) social services.

Such matters to be negotiated with the objective of reaching agreement within twelve (12) months from the beginning of negotiations, subject to the provisions of section 3.

- (c) To commence tripartite negotiations twelve (12) months from the date of signing of this Memorandum on the following matters:
 - (i) economic development;
 - (ii) zones of Nishnawbe-Aski Nation Band activity; and
 - (iii) powers and institutions of self-government.

Such matters to be negotiated with the objective of reaching agreement within a period of twelve (12) months from the beginning of negotiations, subject to the provisions of section 3.

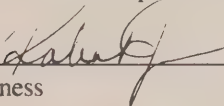
2. It is understood that the parties are free to engage in preliminary bilateral or tripartite discussions or both regarding the matters which are to be the subject of negotiation prior to the commencement of the formal negotiation process.
3. The parties may, at any time, by mutual agreement extend the negotiation period.
4. The parties may, at any time, by mutual consent further define the matters to be considered or add to them.
5. The Ministers agree to participate, as necessary, in meetings in order to expedite negotiations.
6. Each party shall appoint a chief negotiator and other negotiators to carry out the negotiations. The negotiators shall be given the authority to negotiate agreements and reach comprehensive solutions, subject only to ratification by each party in its usual way as determined by it.
7. The Indian Commission of Ontario, hereinafter referred to as "the Commission", is hereby appointed to facilitate the efforts of the parties in the negotiation of matters identified in this Memorandum. The Commission shall, in addition to the powers provided in the Orders-in-Council constituting the Commission, have the following powers:
 - (a) to convene and chair meetings of all parties, at its sole discretion, following a minimum notice of five (5) working days;
 - (b) to require each of the parties, upon reasonable notice, to make available, whenever practicable, experts within its employ, and any document relevant to any issue that is the subject of negotiations; however, nothing in this Memorandum shall be construed as a requirement of any party to make available information that is privileged or would in court proceedings give rise to a right to receive from the court an order providing exemption from disclosure or is, in the case of information in the possession of Canada, a record for which an exemption is provided in the **Access to Information Act**, S.C. 1980-81-82-83, c.111, as amended and as it may be amended from time to time, or is, in the case of information in the possession of Ontario, a record for which an exemption is provided in the Bill, the short title of which is the Freedom of Information and Protection of Privacy Act, 1985, which received second reading in the Legislative Assembly of Ontario on February 10, 1986 or is, in the event that an Ontario Act concerning freedom of information comes into force, a record for which an exemption is provided in such Act, as it may be amended from time to time.
8. To enable NAN to participate fully in these negotiations funds shall be provided as agreed by the parties.

9. The parties agree that the negotiations pursuant to this Memorandum shall be without prejudice to:
- (a) any other Tripartite discussions or any bi-lateral discussions between Indian First Nations and Canada or Ontario on matters which may be dealt with under the Tripartite Process on Indian First Nations self-government;
 - (b) the rights of Ontario and Canada to enter into negotiations and arrangements on self-government with other representatives of the aboriginal peoples of Ontario;
 - (c) the constitutional discussions and processes contemplated by section 37.1 of the **Constitution Act, 1982**; and
 - (d) the positions which any of the Parties may adopt in any other forum.

IN WITNESS WHEREOF the parties hereto have signed this Memorandum of Understanding the day and year first above written.

SIGNED, SEALED AND DELIVERED

on behalf of Canada by the Honourable David
Crombie, Minister of Indian Affairs and
Northern Development

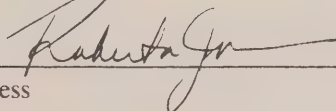


Witness




SIGNED, SEALED AND DELIVERED

on behalf of Ontario by the Honourable Ian Scott,
Attorney General and Minister Responsible for
Native Affairs

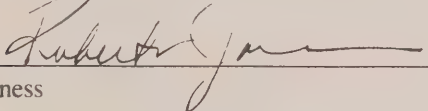


Witness



SIGNED, SEALED AND DELIVERED

on behalf of the Nishnawbe-Aski Nation
by Dennis Cromarty, Grand Chief of
Nishnawbe-Aski Nation



Witness



PART FOUR:

INVENTORY OF ISSUES AND CLAIMS IN THE TRIPARTITE PROCESS

October 1, 1985 – March 31, 1987

ISSUES:

**1986 Indian Lands
Agreement**

Policing

Education

**Nishnawbe-Aski Nation
Memorandum of
Understanding**

Trapping

Lands and Resources

Fishing

**Grand Council Treaty #3 Nation
Fishing Negotiations
Six Nations of the Grand River
Fishing Negotiations**

Wild Rice (Manomin)

Social Services

CLAIMS:

**Squirrel Island Claim
Garden River Band of Ojibways and
the Government of Canada**

**Missinabi Lake Land Claim
Brunswick House Band,
the Government of Canada
& the Government of Ontario**

**Lots 12 and 13, Range 5,
Caradoc Twp.
Chippewas of the Thames Band and
the Government of Canada**

**Original Reserve
Entitlement Claim
Mohawks of Gibson Band and the
Government of Canada**

**Northern Boundary Claim
Mississauga Band of Ojibways,
Government of Canada
& Government of Ontario**

**Whitefish Island Claim
Batchewana Indian Band and the
Government of Canada**

**Indian Reserve #38 Land
Claim
Rat Portage Band, the Government
of Canada & the Government of
Ontario**

**Indian Reserve #24C
Lac La Croix Band, the Government
of Canada and the Government of
Ontario**

**Re: Highway #11
Long Lake #58 Claim, the Govern-
ment of Canada and the Government
of Ontario**

**Treaty #45 1/2
Saugeen and Nawash Bands, the
Government of Canada and the
Government of Ontario**

**200-Acre Land Claim
Mississaugas of the New Credit and
the Government of Canada**

The Indian Commission of Ontario was established in 1978 to assist Canada, Ontario, and First Nations in Ontario to identify, clarify, negotiate and resolve issues which they agreed were of mutual concern.

The Indian Commission of Ontario is a unique instrument in Canada. There are no parallels with which it can be compared. Most of the issues involving First Nations are unique in Canadian society, politics, and law. Most have been unresolved for many decades. No mechanism for resolving these complex and difficult issues had proven satisfactory. The Indian Commission of Ontario was created because it was needed to assist the parties develop new mutually-acceptable relationships and arrangements.

This Report contains background information on the factors leading to the establishment of the Commission and about the Commission itself. It describes the Tripartite Process which the Commission facilitates, and sets out the experience of the Commission during the first half of its current mandate, October 1, 1985 — March 31, 1987.